

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ZILA, INC.,

Plaintiff/Counterdefendant,

v.

JAMES E. TINNELL,

Defendant/Counterclaimant.

Case No. 2:00-CV-01345-KJD-LRL

ORDER

Presently before the Court is Defendant Tinnell's Motion for Summary Judgment Re: the 1992 Patent (#197). Plaintiff filed a response in opposition (#223/224/225) to which Defendant replied (#230/232/233). Contemporaneously, the Court has considered Plaintiff's Motion for Summary Judgment on Tinnell's Claim for Inventorship (#227). Defendant filed a response in opposition (#233) to which Plaintiff replied (#237/238). The Court has also considered Plaintiff's Motion to Strike (#226) and Defendant's Countermotion to Strike (#231) and the corresponding oppositions and replies.

I. Analysis

The facts of this case are well known to the parties and are laid out in detail in the Ninth Circuit's opinion: Zila, Inc. v. Tinnell, 502 F.3d 1014, 1017-19 (9th Cir. 2007). In that opinion, the Court remanded "to the district court for a determination [of] whether Tinnell should be credited

1 with invention of the 1992 patent.” After having read the voluminous briefs, declarations,
2 depositions and exhibits, the Court finds that genuine issues of material fact prevent it from granting
3 either party summary judgment. Summary judgment should not be granted if a reasonable jury could
4 return a verdict for the nonmoving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248
5 (1986). Primarily, issues of credibility are best resolved by finders of fact who personally experience
6 the demeanor and manner of witnesses as they testify.

7 Within ninety (90) days of the entry of this order, the Court orders the parties to meet, confer
8 and prepare a pre-trial brief identifying which issues of law and fact require resolution by the Court
9 at trial and which issues of fact require resolution by a jury with appropriate citations to statute or
10 controlling case law. For any issues on which the parties cannot agree, they shall set out a succinct
11 summation of their opinion with appropriate citations.

12 II. Conclusion

13 Accordingly, IT IS HEREBY ORDERED that Defendant Tinnell’s Motion for Summary
14 Judgment Re: the 1992 Patent (#197) is **DENIED**;

15 IT IS FURTHER ORDERED that Plaintiff’s Motion for Summary Judgment on Tinnell’s
16 Claim for Inventorship (#227) is **DENIED**;

17 IT IS FURTHER ORDERED that Plaintiff’s Motion to Strike (#226) and Defendant’s
18 Countermotion to Strike (#231) are **DENIED as moot**.

19 DATED this 30th day of September 2008.

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23 Kent J. Dawson
24 United States District Judge
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